

**BEFORE THE OHIO  
ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

DEC 20 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Directors Final Findings  
and Orders

Reliant Energy  
1047 Belmont Avenue  
Niles, Ohio 44446

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**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Directors Final Findings and Orders (Orders) are issued to Reliant Energy (Respondent), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) 3753.01 and 3753.08.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the facility shall in any way alter Respondents obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3753 and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of the Ohio EPA has determined the following findings:

1. Respondent operates a power generation facility located at 1047 Belmont Avenue in Niles, Ohio. This facility is operated as an energy wholesale group. Ammonia is a regulated substance listed in Ohio Administrative Code (OAC) rule 3745-104-04 and has a threshold limit of 10,000 lbs. Anhydrous ammonia is used for fly ash conditioning by injecting the ammonia into the boilers flue gas. The ammonia enhances the electrostatic charge on fly ash particles and increases the efficiency of fly ash removal in the electrostatic precipitator. The ammonia supply for this facility had a potential maximum quantity of over 10,000 pounds contained in two, one-thousand-gallon tanks, and the process uses approximately 5,000 pounds of ammonia monthly.

2. An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined by rule 3745-104-04 of the Administrative Code, shall comply with the requirements of this rule by submitting a Risk Management Plan (RMP) no later than June 21, 1999. Respondent has not submitted an RMP to the U.S. EPA, or the Ohio EPA, and has not implemented the RMP Program. This facility was previously owned by Ohio Edison until February of 2002. Ohio Edison may have also operated without submitting an RMP to the Ohio EPA and stored anhydrous ammonia at, or greater than, the threshold amount.
3. On November 19, 2004, Reliant Energy sent the U.S. EPA a letter of voluntary self-disclosure that states that the facility officials conducted an internal audit, and discovered that they had received and stored greater than ten thousand pounds of ammonia in 2003 and 2004. They also stated in the letter that they immediately took steps to insure that the threshold quantity for anhydrous ammonia would not be exceeded at anytime in the future. The U.S. EPA submitted the letter to the Ohio EPA due to the fact that the self-disclosure policy does not apply to Ohio EPA.
4. On April 7, 2005, Ohio EPA, Division of Air Pollution Control (DAPC) inspectors conducted an audit at the facility and discovered deficiencies. The deficiencies are as follows:
  - a) Respondent failed to report a threshold quantity, as required by OAC rule 3745-104-02.
  - b) Respondent failed to develop a management system to oversee the implementation of the risk management program elements, as required by OAC rule 3745-104-07.
  - c) Respondent failed to develop a hazard assessment, as required by rules 3745-104-08 to 3745-104-16.
  - d) Respondent failed to develop process safety information, as required by OAC rule 3745-104-24.
  - e) Respondent failed to develop and implement a process hazard analysis, as required by OAC rule 3745-104-25.
  - f) Respondent failed to develop and implement standard operating procedures, as required by OAC rule 3745-104-26.
  - g) Respondent failed to implement a training program and document

information pertaining to employee training on each covered process, as required by OAC rule 3745-104-27.

- h) Respondent failed to perform inspections and tests on process equipment consistent with the applicable manufacturers recommendations, good engineering practices and prior operating experience. Respondent also failed to develop and implement written procedures to maintain the ongoing integrity of process equipment and train for process maintenance activities, as required by OAC rule 3745-104-28.
  - i) Respondent failed to develop and implement a written procedure to manage changes except for replacement in kind, to process chemicals, technology, equipment, procedures, and changes to stationary sources that affect a covered process, as required by OAC rule 3745-104-29.
  - j) Respondent failed to develop a procedure for a pre-startup review, as required by OAC rule 3745-104-30.
  - k) Respondent failed to conduct a compliance audit, as required by OAC rule 3745-104-31.
  - l) Respondent failed to develop written procedures pertaining to incident investigation, as required by OAC rule 3745-104-32.
  - m) Respondent failed to develop and implement an employee participation program, as required by OAC rule 3745-104-33.
  - n) Respondent failed to develop a hot work permit procedure, as required by OAC rule 3745-104-34.
  - o) Respondent failed to develop a contractor safety and evaluation program, as required by OAC rule 3745-104-35.
  - p) Respondent failed to develop and implement an Emergency Response Plan, as required by OAC rule 3745-104-36.
5. According to the facility officials, the amount of ammonia stored on site is currently under the RMP threshold amount and the facility will maintain an amount of ammonia under the RMP threshold of 10,000 lbs.
6. The Director has given consideration to, and based on his determination on, evidence relating to the technical feasibility and economic reasonableness of

complying with the following Orders and benefits to the people of the State to be derived from such compliance.

#### **V. ORDERS**

The Director hereby issues the following Orders:

1. Respondent shall not store any RMP regulated chemical at the threshold amount at any time, unless respondent submits an RMP and implements the RMP Program.
2. Pursuant to ORC 3753.09, Respondent is assessed a civil penalty in the amount of twenty five thousand one hundred and twenty five dollars (\$25,125) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of twenty thousand one hundred dollars (\$20,100) in settlement of Ohio EPA's claims for civil penalties; which will be deposited into the Risk Management Plan fund established pursuant to ORC 3753.05.
3. Payment shall be made by an official check made payable to Treasurer, State of Ohio for \$20,100. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, attention Brenda Case, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.
4. In lieu of paying the remaining five thousand twenty five dollars (\$5,025) of the civil penalty, Respondent shall fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of \$5,025 to the Ohio EPA's fund for the Clean Diesel School Bus Program. Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to Treasurer, State of Ohio for \$5,025. The official check shall be submitted to Brenda Case together with a letter identifying the Respondent and the facility to the above stated address.

A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor at the following:

Ohio EPA  
Division of Air Pollution Control  
P. O. Box 1049  
Columbus, Ohio 43216-1049

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of the Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

This certification shall contain the following attestation: I certify that the information contained in or accompanying this certification is true, accurate and complete.

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is an official who is in charge of a principal business function of Respondent.

#### **VII. OTHER CLAIMS**

Nothing in these orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to Respondent.

#### **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, State and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

#### **IX. MODIFICATIONS**

These orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of the Ohio EPA.

#### **X. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-0149  
Attention: Kimberly Joseph, DAPC, RMP

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in section XII of these Orders.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action taken by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and services of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such appeal and intervention, Respondent shall continue to comply with these Orders unless these Orders are stayed vacated or modified.

#### **XIII. EFFECTIVE DATE**

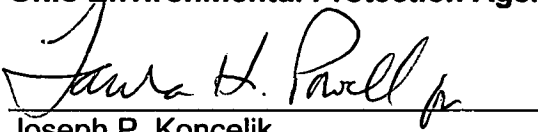
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:**

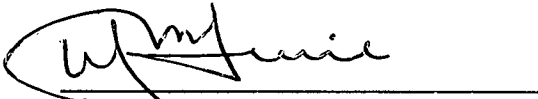
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Joseph P. Koncelik  
Director

12-15-05  
Date

**IT IS AGREED:**

**Reliant Energy**

  
\_\_\_\_\_  
Signature

11/30/05  
Date

W. F. MCGUIRE  
Printed or Typed Name

VP - ESH  
Title